

## Chapter 1. Introduction

Market squid (*Loligo opalescens*) is the state's largest fishery by tonnage and economic value. In addition to supporting this important commercial fishery, the market squid resource is important to the recreational fishery as bait and is forage for fishes, marine mammals, birds, and other marine life. The growing international market for squid and declining squid production from other parts of the world has resulted in an increased demand for California market squid. That demand resulted in rapid growth in the number of vessels harvesting squid and the amount of squid harvested. In order to provide for a sustainable fishery and protect against resource damage and ecological effects, the Legislature deemed it necessary to adopt and implement fishery management that sustains both the squid population and the marine life that depends on squid.

The following sections discuss the purpose and need for management action in the commercial market squid fishery, describe the goals and objectives of the Marine Life Management Act (MLMA) and other relevant law, and identify management objectives specific to the market squid fishery management plan (MSFMP). A description of regulatory authorities and responsibilities that will support these objectives completes this chapter.

### 1.1 Purpose and Need for Action

#### 1.1.1 Problem Statement

Commercial landings of market squid in California increased almost 400% from the 1990-1991 to the 1997-1998 season. The squid fishing season runs from 1 April through 31 March the following year. Concern over the rapid increase in squid harvest and new vessels entering the fishery from other states led to industry sponsored legislation in 1997. This legislation, Senate Bill (SB) 364 (Sher), was incorporated into Fish and Game Code (FGC) §8420-8429.7 which identified the problem as follows:

*(a) The Legislature finds and declares that the fishery for market squid (Loligo opalescens) is the state's largest fishery by volume, generating millions of dollars of income to the state annually from domestic and foreign sales. In addition to supporting an important commercial fishery, the market squid resource is important to the recreational fishery and is forage for other fish taken for commercial and recreational purposes, as well as for marine mammals, birds, and other marine life. The growing international market for squid and declining squid production from other parts of the world has resulted in an increased demand for California market squid, which, in turn, has led to newer, larger, and more efficient vessels entering the fishery and increased processing capacity.*

*(b) The Legislature finds that the lack of research on market squid and the lack of annual at-sea surveys to determine the status of the resource, combined with the increased demand for, and fishing effort on, market squid could result in overfishing of the resource, damaging the resource, and financially harming*



*those persons engaged in the taking, landing, processing, and sale of market squid.*

*(c) The Legislature further finds that some individuals, vessels, and processing plants engaged in the market squid fishery have no other viable alternative fisheries available to them and that a decline or a loss of the market squid resource would cause economic devastation to the individuals or corporations engaged in the market squid fishery.*

*(d) The Legislature declares that to prevent excessive fishing effort in the market squid fishery and to develop a plan for the sustainable harvest of market squid, it is necessary to adopt and implement a fishery management plan for the California market squid fishery that sustains both the squid population and the marine life that depends on squid.*

*(e) The Legislature finds that a sustainable California market squid fishery can best be ensured through ongoing oversight and management of the fishery by the Commission. With regard to the market squid fishery, the Legislature urges that any limited entry component of a fishery management plan, if necessary, should be adopted for the primary purpose of protecting the resource and not simply for the purpose of diminishing or advancing the economic interests of any particular individual or group.*

This legislation further placed a moratorium on the number of vessels in the fishery, established a \$2,500 permit for market squid vessels and light boats and initiated a three-year study of the fishery. In addition, a Squid Fishery Advisory Committee (SFAC) and a Squid Research Scientific Committee (SRSC) were formed to advise the California Department of Fish and Game (Department) on research and interim measures. Further, SB 364 required the Department to submit a report on the status of the market squid fishery with recommendations for a market squid conservation and management plan. In April 2001, the Department submitted the report, which was developed through the cooperative efforts of scientists, fishing industry representatives and other stakeholders. Late in 2001, the Legislature delegated management authority for the squid fishery to the Fish and Game Commission (Commission), including adoption of a MSFMP.

The Legislature recognized that little is known about market squid population dynamics, the size of the resource and other biological information. In 1998, the Department developed and implemented a large-scale monitoring and biological research program on the market squid fishery and resource. This program has and will continue to provide critical information necessary to the development of sound long-term management strategies.

During the initial three years of study, contracted independent researchers (in conjunction with Department employees) explored several science-based methods for developing management strategies for the fishery. Some of this research examined market squid life history and discovered that the lifespan of market squid is less than one year. Fishery dependent research shows that market squid availability, and likely their abundance, is highly variable among seasons. These findings indicate that



traditional assessment methods used to determine biomass cannot be applied to market squid.

### **1.1.2 Location and General Characteristics of the Project Area**

The marine environment is composed of numerous microhabitats, each of which supports a distinct assemblage of species uniquely adapted to their environment. The harvest of market squid is proposed statewide, in all areas defined as ocean waters in the California Code of Regulations (CCR) Title 14 §27.00, except where prohibited or restricted, as specified, in state marine protected areas (MPAs), and as regulated by provision of this MSFMP. Generally, market squid are harvested nearshore on sandy bottom habitats. Landing records indicate that the fishery is concentrated in two distinct areas: Monterey Bay and the Southern California Bight, primarily around the Channel Islands. Thirty years ago, the commercial fishery was primarily focused in Monterey Bay; however, since the 1985-1986 season the vast majority of the catch is taken from the Southern California Bight. An in-depth description of the habitat preferences and life history characteristics of market squid is found in Chapter 2.

### **1.1.3 The Marine Life Management Act**

The MLMA of 1998 created policies, goals, and objectives to govern the conservation, sustainable use and restoration of California's living marine resources. The MLMA opened a new chapter in the conservation and management of California's marine wildlife and fisheries (Weber and Heneman 2000) and gave the Commission and Department specific authorities, goals, objectives, and mandates for managing marine resources.

#### **Goal I: Ensure Long-Term Resource Conservation and Sustainability**

The MLMA's overriding goal is to ensure the conservation, sustainable use, and restoration of California's marine living resources [FGC §7050(b)]. This includes the conservation of healthy and diverse marine ecosystems and marine living resources [FGC §7050(b)(1)]. To achieve this goal, the MLMA calls for allowing and encouraging only those activities and uses that are sustainable [FGC §7050(b)(2)]. Sustainability is the overriding principle of the MLMA and the NFMP.

Within this overall policy on marine living resources, the MLMA sets the State's policy for marine fisheries [FGC §7055; §7056]. Objectives include:

1. Conserve the health and diversity of marine ecosystems and marine living resources [FGC §7050(b)(1)].
2. Allow and encourage only those activities and uses of marine living resources that are sustainable [FGC §7050 (b)(2)].
3. Maintain the health of marine fishery habitat, and to the extent feasible, restore or enhance that habitat where appropriate [FGC §7056(b) and §7084].

#### **Goal II: Employ Science-based Decision-making**

At the core of the MLMA is the principle of basing decisions on sound science and other useful information. With this in mind, the MLMA includes, as a general objective,



promotion of marine ecosystem research that will enable better management decisions [FGC §7050(b)(5)]. The MLMA also calls for basing decisions on the best available scientific information as well as other information that the Department and the Commission possess [FGC §7050(b)(6)]. While the MLMA emphasizes scientific information in making decisions regarding the conservation and sustainable use of California's marine living resources, it also recognizes the value and importance of relying upon other sources of information such as local knowledge [FGC §7056(h)]. Objectives include:

1. Encourage fishery management decisions that are adaptive and based on the best available information and that do not substantially delay the management process [FGC §7056(g) and FGC § 7072(b)].
2. Create cooperative and collaborative partnerships with fishery participants, public and private entities, and research institutions to acquire Essential Fishery Information and to design and conduct research and monitoring [FGC §7056(k)].
3. Periodically review the management system for effectiveness in achieving sustainability goals and for fairness and reasonableness in its interaction with people affected by management [FGC §7056(m)].

### **Goal III: Increase Constituent Involvement in Management**

The MLMA focuses special attention on constituent involvement in marine fisheries management – not only in the development of management plans but in other key activities such as research and implementation of management decisions. The MLMA calls for involving “all interested parties” in making decisions regarding marine living resources [§7050(b)(7)] and for disseminating accurate information on the status of marine life and its management §7050(b)(8)]. Objectives include:

1. Develop an open decision-making process and seek the advice and assistance of interested parties so as to consider relevant information including local knowledge [FGC §7056(h)].
2. Allow fishery participants to propose methods to prevent or reduce excess effort in market squid fishery [FGC §7056(e)].
3. Involve constituents in preparing Fishery Management Plans (FMPs) [FGC §7076(a)].
4. Involve interested people in designing research protocols for individual FMPs [FGC §7074(b)].

### **Goal IV: Balance and Enhance Socio-economic Benefits**

California's fisheries are a public trust resource. As such they are to be protected, conserved and managed for the public benefit, which may include food production, commerce and trade, subsistence, cultural values, recreational opportunities, maintenance of viable ecosystems, and scientific research. None of these purposes need be mutually exclusive and, ideally, as many of these purposes should be encouraged as possible, consistent with resource conservation. The MLMA requires recognition of important aesthetic, educational, scientific, and recreational uses that do not require taking marine wildlife, as well as the economic and cultural importance of sustainable sport and commercial fisheries [FGC §7050(b)(3)(4)]. Objectives include:

1. Recognize the importance of non-consumptive uses of California's marine resources [FGC §7050(b)(3)].



2. Observe the long-term interests of people dependent on fishing for food, livelihood, or recreation, and minimize the adverse impacts of fishery management on small scale fisheries, coastal communities, and local economies [FGC §7056(i)(j)].
3. Develop mechanisms to resolve disputes about issues such as, but not limited to, access, allocation, and gear conflicts [FGC §7056(k); FGC §7059(b)(2)].

#### **Goal V: Identify Implementation Costs and Sources of Funding**

The Department's management of commercial and recreational fisheries has been supported by general funds appropriated by the Legislature, by federal funds for commercial and recreational fishing, and by user fees in the form of permits, licenses, and other fees (FGC §710.5). In FGC §711(c), the Legislature stipulated that revenues for hunting and sport fishing programs not be used for other purposes, including commercial fishing. In 1993, the Legislature reiterated its intent to ensure adequate funding from appropriate sources (FGC §711).

##### Objectives:

1. Help ensure that fees more accurately reflect all costs of the Department's management [FGC §710.5].
2. Identify the resources and time necessary to acquire EFI [FGC §7081(b)].
3. Cooperate with the Legislature, the commercial fishing industry, recreational fishermen, the environmental community, and other interested people to identify alternative sources of funding for "the department's necessary marine resource management and protection responsibilities" [FGC §710.7(c)].

#### **1.1.4 Specific Goals and Objectives of the Market Squid Fishery Management Plan**

##### Goals:

- To manage the market squid resource to ensure long term resource conservation and sustainability;
- To develop a framework for management that will be responsive to environmental and socioeconomic changes.

##### Objectives:

- Provide for the sustainable use of the market squid resource by commercial and recreational fisheries for the optimum long-term benefits of present and future generations;
- Maintain an adequate forage reserve for marine mammals, fish and seabirds;
- Use adaptive management to provide for necessary changes and modifications of management measures in a timely and efficient manner;
- Ensure proper utilization, the avoidance of bycatch in the market squid fishery, and the avoidance of wastage of market squid in other fisheries;
- Support and promote increased understanding of market squid natural history, population dynamics, and its ecosystem's role to improve management;
- Ensure effective monitoring of the market squid population and its fisheries;
- Ensure enforcement of regulations;
- Identify, protect, and restore critical market squid habitat;





- Minimize the adverse impacts of management on small-scale fisheries, coastal communities, and local economies.

### **1.1.5 Constituent Involvement**

The MLMA calls for meaningful constituent involvement in the development of each fishery management plan (FMP), and requires the Department to develop a process to involve interested parties in that process. In addition, the California Environmental Quality Act (CEQA) requires public consultation during lead agency review of all proposed projects subject to a certified regulatory program [See generally Public Resources Code (PCR) §21080.5(d)(2); see also CCR Title 14, §781.5]. The MSFMP and its associated implementing regulations is, of course, such a project under CEQA.

In 1998, two advisory committees were formed to examine the market squid fishery: the SFAC and the SRSC. The SFAC included fishery participants, environmentalists, and scientists and advised the Department on proposed management strategies and changes to the fishery. The SRSC comprised national and international university, agency, and private industry scientists and made recommendations on squid research protocols and methods as well as management strategies. These two committees met from 1998 through 2000 and played a major role in the interim management of the fishery.

The Department prepared and filed a Notice of Preparation (NOP) with the State Clearinghouse in December 2001 for distribution to appropriate responsible and trustee agencies for their input and comments. Further, the notice was provided to individuals and organizations that had expressed prior interest in regulatory actions regarding market squid. Comments received in response to the NOP and a preliminary draft MSFMP are addressed in Section 4.

The Department also conducted two public meetings to present options for management of the market squid fishery. The first meeting was held on 26 January 2001 in Port Hueneme and the second was in Monterey on 27 January 2001. The proposed project for management of the market squid fishery was developed through these venues.

The Department released the Preliminary Draft MSFMP for public review and comment on 15 May 2002. The Preliminary Draft MSFMP was sent to interested parties and was also posted on the Department's web site for public review. The Department accepted all written comments regarding the Preliminary Draft MSFMP that were received before 8 February 2003. Responses to comments regarding the Preliminary Draft MSFMP are addressed in Section 4.

The Department submitted to the Commission the Draft MSFMP on 7 July 2003. This document was the result of revisions to the Preliminary Draft MSFMP which was released for nearly a year of public review in 2002. It also went through an extensive scientific peer review process. Based on those reviews, substantial improvements were



incorporated into the 2003 Draft MSFMP, and it was completely reorganized into four sections and streamlined for clarity and content. Public testimony on the Draft MSFMP was taken at the 1 August 2003 and 5 December 2003 Commission meetings.

At the 3 December 2003 meeting, the Commission asked the Department to incorporate additional alternatives and analysis into the Draft MSFMP. A revised Draft MSFMP was released for public review and comment on 12 April 2004. Public testimony on the revised Draft MSFMP was taken by the Commission at the 4 May 2004, 27 August 2004, and 3 December 2004 meetings. In addition, the Commission held special hearings in Monterey (23 July 2004) and San Pedro (13 August 2004) to take public testimony directly from fishermen in the ports where the majority of squid fishing activity occurs.

The Commission adopted the MSFMP at its 27 August 2004 and 3 December 2004 meetings. The Department has addressed all written comments regarding the Draft MSFMP received through 3 December 2004 in Section 4.

#### **1.1.6 Summary of Goals and Objectives**

The goals and objectives above provide a framework and guide for the development and consideration of management measures and research for the market squid fishery. An evaluation of the contribution of these management measures to meeting the goals and objectives of both the MLMA and the MSFMP is presented in Table 1.1. They will also provide a guide for evaluating the effectiveness of research and management and other activities in the future.



Table 1.1 Contribution of management measures to ecological goals and objectives of the Marine Life Management Act and to the objectives of the Market Squid Fishery Management Plan													
MLMA and MSFMP Goals and Objectives	Fishery Management Measures												
	Seasonal Catch Limitation	Monitor fishery through Egg Escapement method	Daily Trip Limits	Weekend Fishing Closures	Maintain current monitoring & research programs	Establish a Live bait Permit	Gear Restrictions	Establish Restricted Access (RA) Fleet Capacity Goal	Establish RA Initial Issuance Criteria	Establish RA Permit Fees	Establish RA Permit Transfer Criteria	Establish Experimental Gear Permits	Establish RA Regional Control Date
MSFMP Option	A	B	C	D	E	F	G	H	I	J,N	K,L,M	O	P
Set Aside Harvest Replenishment or General Habitat Closure Areas	Q												
Area and Time Closures for Seabirds	R												
Market Squid Advisory Committee	S												
Ensure long term resource conservation and sustainability	●	●	●	●			●	●	●				
Prevent overfishing	●	●	●	●	●			●	●	●	●		●
Provide for sustainable use of market squid resource by commercial and recreational fisheries	●	●	●	●	●	●	●	●	●	●	●		
Identify, protect and restore critical market squid habitat	●	●	●	●	●		●						
Maintain adequate forage reserve for marine mammals, fish and seabirds	●	●	●	●								●	
Management framework responsive to environmental and socioeconomic changes	●	●	●	●	●	●	●	●	●	●	●	●	●
Ensure proper utilization and avoidance of bycatch in market squid fishery and of wasted squid in other fisheries					●	●	●						
Use adaptive management to make necessary changes and modifications in efficient and timely manner		●			●		●			●	●		
Minimize the adverse impacts of management on small-scale fisheries, coastal communities, and local economies			●	●	●	●	●	●	●			●	●
Employ science-based decision-making	●	●	●	●	●		●	●	●	●			
Effective monitoring of market squid resource and its fisheries		●			●			●	●	●			●
Support and promote market squid research		●				●				●			●
Identify implementation costs and sources of funding		●			●					●			●
Ensure effective enforcement		●	●		●	●	●	●	●	●		●	●
	●	= Large Contribution			= Smaller Contribution		●	= Smallest Contribution					





## **1.2 The Structure of the Market Squid Fishery Management Process under the Marine Life Management Act**

The MLMA recognizes the need to adapt to changing circumstances. It does so by embracing the principle of adaptive management. The MLMA defines this principle as a scientific policy that seeks to improve management “by viewing program actions as tools for learning” (FGC §90.1). Management measures must be designed to provide useful information whether they succeed or fail. Monitoring and evaluation of fisheries are needed to detect the effect of the measures.

The MLMA explicitly calls for ensuring that managers can respond to changing environmental and socio-economic conditions [FGC §7056(l)], and requires that FMPs establish a procedure for regular review and amendment, if that is appropriate [FGC §7087(a)]. Because the review and amendment of an FMP is generally a lengthy process, the MLMA allows greater flexibility in responding to changes in a fishery by allowing an FMP to specify the kinds of regulations that may be changed without amending the FMP itself [FGC §7087(b)]. This process mirrors the federal government’s process, where annual quotas or in-seasons adjustments in management measures may generally be made without resorting to the lengthy process of amending the FMP itself.

To meet the standards of the MLMA for adaptive management, the MSFMP establishes a hierarchical framework within which adjustments to the management of the market squid fishery can be made in a responsible and timely manner. Depending upon the scale and significance of needed changes in management, the FMP itself may need to be amended or an in-season decision by the Commission or Department may be appropriate. The former action requires much greater analysis and public review than does the latter. Standards for determining the appropriate level of action are described below.

### **1.2.1 Process of Plan Review**

The MLMA requires public and peer review for all fishery management plans (FMPs FGC §7075-7078). For public review, the Department solicits input and/or assistance from the various user groups who may be affected by the FMP or other interested parties prior to and during development of an FMP. The Department can also approach the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries), Sea Grant, the Pacific Fishery Management Council (PFMC), or advisory committees established by the Department for advice. Once the FMP or amendment is developed, the plan must be submitted to the Commission and available to the public for review and comment. The Commission must hold at least two public hearings on the FMP. Any comments or proposals made to the Commission relative to the FMP may be considered by the Commission and forwarded to the Department for inclusion into the FMP.



For peer review, the Department set up a formalized procedure as required by FGC §7062 for examining the science that is used as the basis for any management recommendation. The peer review panel was given all pertinent comments received by the Department from fishery participants or other interested parties. Any suggestions made through peer review can be used in whole or part; however, if the Department disagrees with the findings and chooses not to use the recommendations, an explanation of why the peer review recommendations were not used must accompany the FMP or amendment. Comments received from the peer review committee and Department responses were presented in Section 4 of the Draft MSFMP dated 12 April 2004.

## **1.2.2 Types of Framework Actions**

The Commission may take four general types of actions within the framework of the MSFMP: 1) FMP amendment, 2) full rulemaking, 3) notice action, and 4) prescribed action. Each type of action reflects a different degree of change in management - from changing a basic feature of the MSFMP itself to implementing a routine administrative matter, such as closing the fishery when seasonal catch limit is reached. Brief descriptions of each of these types and the conditions for their use follow.

### **1.2.2.1 FMP Amendment**

FMP framework management is designed to be flexible and adaptable to a wide range of future conditions, and intended to function without the need for frequent amendment. However, unforeseen biological, environmental, social or economic developments may create a situation under which the MSFMP does not adequately provide effective management of the market squid fishery. Under such circumstances, the Commission could amend the MSFMP.

The MSFMP must be amended if the change in management is a major or controversial action outside the scope of the MSFMP. Examples of such actions include:

- changes to management objectives;
- a change in the “overfished” or “overfishing” definitions;
- amendments to any procedures required by the FMP;
- revisions to any management measures that are fixed in the FMP.

Besides obtaining the views of advisory bodies, holding public hearings, and soliciting public comments, preparation and adoption of an amendment to the MSFMP will require environmental analysis of proposed changes under CEQA.

### **1.2.2.2 Full Rulemaking Actions**

If changes to management measures will have a long-term effect, allow discretion in their application, or have impacts that may not have been analyzed previously, a Full Rulemaking process is required. This process, which must follow standard Administrative Procedures Act procedures, normally requires at least three Commission



meetings. Full Rulemaking may also be used to declare a management measure “routine.” In the Full Rulemaking process, the Commission reviews the issues at a first meeting and authorizes its staff to publish notice of its intent to adopt regulations at a later meeting. This notice, which begins a minimum 45-day period for public comment, includes specific documentation including an Informative Digest that summarizes existing law and the effect of the proposed action, the deadline for public comments, the time and place of any public hearings, and contact information for obtaining additional information. The notice is sent to persons on the Commission’s and Department’s active mailing lists and published in the California Regulatory Notice Register.

At its second meeting, the Commission reviews the proposed measures and alternatives in detail and receives public comment. At the third meeting, the Commission hears public comment and adopts the final rules. Commission staff then submits the final rules to the Office of Administrative Law for procedural review prior to publication.

The Commission or the Department may refer an issue to a standing committee or appoint an ad-hoc advisory committee to conduct further analyses and/or develop recommendations. The composition of such committees will include the Department, other agencies with statutory responsibility for the issue, representatives from affected groups, and any other persons chosen by the Commission.

This process does not diminish the authority of the Director of the Department (Director) or the Commission to take emergency regulatory action under FGC §7710, California Government Code §11346.1, or FGC §240.

#### **1.2.2.3 Notice Actions**

Once a measure (such as establishing annual catch quotas) has been classified as routine through the Full Rulemaking Action process, it may be modified after a single meeting of the Commission if both of the following conditions are met:

- the modification is proposed for the same purpose as the original measure;
- impacts of the modification are within the scope of the impacts analyzed when the measure was originally classified as routine.

Before acting on such a proposal, the Commission will send a written notice describing the proposed action to people on the Commission’s and Department’s active mailing list and will provide a 15-day period for comment.

#### **1.2.2.4 Prescribed Actions**

When an action is non-discretionary and the impacts have already been analyzed through Full Rulemaking, the Department may take the action without prior public notice, opportunity to comment, or a Commission meeting. An example of such a Prescribed Action is the closure of a fishery when a quota has been reached. The Full



Rulemaking process that authorized the Prescribed Action must specify methods for notifying the public.

### **1.2.2.5 Review of Management Measures**

The MLMA requires periodic review of management measures because environmental, social, and economic changes during the year may lead to consideration of regulatory changes under the framework described above. The MSFMP proposes that the Department conduct a periodic review to determine the effectiveness of market squid regulations in accomplishing the goals and objectives of the MSFMP. This review will determine whether any resource, conservation, social, or economic issues exist that require a management response.

Examples of biological issues that might trigger further review and possible regulatory action are:

- catch that is projected to exceed the allowable catch limits;
- increased interaction with non-target species;
- any adverse or significant change in the biological characteristics of harvested market squid stock (e.g., age composition);
- existing or imminent overfishing;
- development of a stock assessment for market squid that significantly changes the estimates of impacts from current management;

Examples of social or economic issues that may be addressed in the periodic review are:

- gear conflicts, or conflicts between competing user groups;
- extension of fishing and marketing opportunities as long as practicable;
- improvements to product volume and flow to the consumer or user;
- to increase economic yield;
- to maintain or improve the safety of fishing operations;
- to increase or decrease fishing efficiency;
- to maintain or improve product quality;
- to maintain or improve data collection, including means for verification;
- to maintain or improve monitoring and enforcement;
- to address any other measurable benefit to the fishery.

If the Department determines that current management of the market squid fishery is not meeting the goals of the MSFMP, the Department will present the results of this review to the advisory committee(s) established under the MSFMP to seek their views and recommendations. The Department will then present its recommendations and views of the advisory committee(s) to the Commission regarding the need for changes in management of the market squid fishery. The Department needs to present the rationale, data and analyses in support of its recommendations for regulatory changes. The advisory committee(s) may also make management recommendations to the Department. The Commission will then determine whether to consider an amendment to the MSFMP or a full rulemaking action for the regulations implementing it.



### 1.3 Authority and Responsibility

As per the California Constitution, the State Legislature, through statute, may provide for the seasons and the conditions under which different species of fish may be taken. California law consists of 29 codes including the FGC. Laws in the FGC consist of statutes and propositions passed by the voters of the state. Statutes, such as MLMA, are chaptered bills that have passed through both houses of the Legislature and ultimately signed by the Governor and recorded by the Secretary of State. The FGC is administered and enforced through regulations. The rulemaking powers of the Commission, a body created by the Constitution and appointed by the Governor, are delegated to it by the Legislature.

The Department is the state agency charged with carrying out certain policies adopted by the State Legislature and the Commission. The Department enforces statutes and regulations governing recreational and commercial fishing activities, conducts biological research, monitors fisheries, and collects fishery statistics necessary to protect, conserve, and manage the living marine resources of California.

Other state agencies have functions and responsibilities that directly or indirectly affect the management of ocean and coastal resources. In addition, marine resources are also managed by federal laws governing the take of seabirds, marine mammals, fish, and shellfish (Weber and Heneman 2000).

#### 1.3.1 California Environmental Quality Act (CEQA)

The Legislature enacted CEQA in 1970 to serve primarily as a means to require public agency decision makers to document and consider the environmental implications of their actions. In so doing, CEQA is premised on a number of Legislative findings and declarations, including a finding that it is “necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man.” [PCR §21000(b)] CEQA also codifies State policy to, among other things, “[p]revent the elimination of fish or wildlife species due to man’s activities, insure that fish and wildlife populations do not drop below self perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history” [Id., PCR §21001(c)]. A similar provision in the FGC also declares: “It is hereby declared to be the policy of the State to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the State for the benefit of all the citizens of the State and to promote the development of local fisheries and distant-water fisheries based in California in harmony with international law respecting fishing and the conservation of the living resources of the oceans and other waters under the jurisdiction and influence of the State.” (FGC §7055) CEQA applies to all “governmental agencies at all levels” in California, including “state agencies, boards, and commissions” [PCR §21000(g), 21001(f)(g)]. Public agencies, in turn, must comply with CEQA whenever they propose to approve or carry out a discretionary project that may have a



significant effect on the environment (see generally *Id.*, PCR §21080). For purposes of CEQA, a project includes “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment,” that is, like the proposed project, “directly undertaken by any public agency” [*Id.*, PCR §21065(a)]. Moreover, as mandated by the Legislature, “it is the policy of the state that projects to be carried out by public agencies be subject to the same level of review and consideration under [CEQA] as that of project projects required to be approved by public agencies” (*Id.*, PCR §21001.1).

Unlike its “procedural” federal counterpart, the National Environmental Policy Act (NEPA) (42 USC §4321 et seq.), CEQA contains a “substantive mandate” that public agencies refrain from approving projects with significant environmental effects if there are feasible mitigation measures or alternatives that can substantially lessen or avoid those effects (Mountain Lion Foundation, *supra*, 16 Cal.4th at p. 134; PCR §21002). CEQA, as a result, “compels government first to identify the [significant] environmental effects of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives” [*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233; see also *Sierra Club v. Gilroy City Council* (1990) 222 Cal. App.3d 30, 41.]. Public agencies fulfill CEQA’s mandate through required consultation with other interested public agencies and the public; preparation of EIRs (Environmental Impact Reports), functional equivalent documents (see section 1.3.1.1), or other appropriate CEQA analysis; subjecting their environmental analyses to public review and comment, and preparing responses to public comments concerning the environmental impacts associated with their proposed projects; and ultimately adopting findings detailing compliance with CEQA’s substantive mandate. In this respect, the CEQA process “protects not only the environment but also informed self-government” [*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (internal quotation marks deleted)]. Indeed, as recently underscored by the California Supreme Court, compliance with these requirements, even in the context of a certified regulatory program, “ensures that members of the [governmental decision making body] will fully consider the information necessary to render decisions that intelligently take into account the environmental consequences. It also promotes the policy of citizen input underlying CEQA [*Mountain Lion Foundation, supra*, 16 Cal.4th at p. 133 (internal citations omitted)].

### **1.3.1.1 Functional Equivalent**

There is one alternative to the CEQA Environmental Impact Report (EIR)/Negative Declaration (ND) requirement that exists for State agencies with activities that include protection of the environment as part of their regulatory program. Under this alternative, an agency may request certification of their program from the Resources Agency Secretary (PCR §21080.4 of CEQA). With certification, an agency may prepare functional equivalent environmental documents in lieu of EIRs or NDs (PCR §15252 CEQA Guidelines). The regulatory program of the Commission has been certified by the Resources Agency Secretary; thus, the Commission is eligible to submit an environmental document in lieu of an EIR. However, the exception for the certified state





regulatory program is not a blanket exemption from CEQA because the agency must still comply with CEQA policies, evaluation criteria, and standards.

### **1.3.1.2 MSFMP Environmental Document**

The Environmental Document (ED) found in Section 2 describes the proposed project options, status quo options (no project alternative), and a range of alternative project options evaluated in the draft MSFMP. It discusses the potential effects of the proposed project, reasonable alternatives to the proposed action and cumulative effects related to the proposed project and its alternatives. The discussion of alternatives focuses on the alternatives to the project that are capable of avoiding or substantially lessening the significant effects of the project, even if the alternatives would impede to some degree the attainment of the project objectives, or would be more costly. Of those alternatives, the ED examines in detail only the ones that could feasibly attain most of the basic objectives of the project. It does not consider alternatives whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.

At its 27 August 2004 meeting in Morro Bay, the Commission certified the Market Squid Fishery Management Plan's Environmental Document for consistency with the provisions of the California Environmental Quality Act and adopted the MSFMP.

### **1.3.1.3 Federal Law**

The Federal government manages the marine resources and fishing activities of the United States (US) through the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). The purpose of the MSFCMA is to provide conservation and management of US fishery resources, develop domestic fisheries, and phase out foreign fishing activity within the Exclusive Economic Zone (EEZ) consisting of ocean waters from three miles to 200 miles offshore. Under MSFCMA, the federal government also has jurisdiction over fish species that occur predominately in the EEZ, and may preempt state jurisdiction over such fisheries in state waters when state management conflicts with a federal FMP.

Eight Regional Fishery Management Councils implement the goals of the MSFCMA in coordination with NOAA Fisheries, United States Department of Commerce. PFMC manages several fisheries off Washington, Oregon, and California through FMPs. The State of California has representation on the PFMC. Five coastal pelagic species (CPS) are regulated under the federal Coastal Pelagic Species Fishery Management Plan (CPS FMP). Under this plan, two species are actively managed: Pacific sardine and Pacific mackerel; three species are monitored only: northern anchovy, jack mackerel, and market squid. The PFMC delegated management authority for market squid to the State.

## **1.4 State Management of Market Squid**



Management of the market squid fishery has been divided between the Legislature and the Commission. The market squid fishery was minimally regulated until the passage of SB 364 in 1997. Since that time, both the Legislature and the Commission have adopted management measures for various components of this fishery (see Appendix B).

#### **1.4.1 Legislative Responsibilities**

Statutes passed by the Legislature regulating commercial fishing are contained in the FGC. Some provisions of law apply specifically to market squid, while others apply generally to the take of all fish including some area closures and gear restrictions. Statutes pertaining specifically to the commercial take of market squid are listed in Appendix B.

The MLMA identifies a number of policies, goals, objectives, requirements, and processes for managing California's marine resources. These resources are to be managed to assure ecological, recreational, long-term economic, cultural, and social benefits.

The MLMA requires that FMPs form the primary basis for managing the State's marine fisheries. A FMP is a planning document that is based on best available scientific information and contains a comprehensive review of the fishery along with clear objectives and measures to promote sustainability of that fishery.

#### **1.4.2 Commission and Department Responsibilities**

The authority and responsibility of the Commission and the Department to make and enforce regulations governing recreational and commercial fishing are provided by the Legislature. General policies for the conduct of the Department are formulated by the Commission (FGC §704). General policy for conservation of aquatic resources is provided by FGC §7055, and specific policy for the management of marine resources (MLMA) is provided in FGC § 7050-7090.

#### **1.4.3 Commercial Fisheries**

Commercial fishing is regulated by the Legislature through statutes and by the Commission through regulations. Provisions relating to the taking and possession of fish for commercial purposes are provided in FGC §7600-9101 and CCR Title 14. With the passage of the SB 209 (2001), authority to regulate the market squid fishery was delegated to the Commission.

#### **1.4.4 Rulemaking Process under the Administrative Procedures Act (APA)**

The California Constitution and Legislative statutes create public entities and can authorize them to make regulations in order to carry out their duties. The APA of the



California Government Code (CGC) §11340-11359 guides the rulemaking process for such entities.

The Commission's general rulemaking authority is provided in FGC §200-221 and in other statutes throughout the Fish and Game Code. Basic minimum procedural requirements for the adoption, amendment or repeal of regulations are provided in the CGC §11346. Emergency rulemaking authorities are found in CGC §11346.1 and in FGC §240.

